IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2005

CORAM

THE HONOURABLE MR JUSTICE V. KANAGARAJ

W.P. No.1601 of 1997

S. Ponnusamy ... Petitioner

Vs.

1. The Presiding Officer
Labour Court
Salem.

2. The Management of
Madras Aluminum Company Ltd.,
Mettur Dam
Salem District. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for the relief extracted supra.

For Petitioner : Mr. V. Prakash, Senior Counsel
for M/s. G.Ramapriya & Mr.Ravindran, T.Ramkumar

For 2nd Respondent: M/s. T.S. Gopalan & Co

O R D E R

The writ petition has been filed praying to issue a Writ of Certiorari calling for the records of the first respondent relating to his common order dated 14.2.1995 in C.P.Nos.6 of 1992 and 252 of 1992, quash the same in so far as it denied the benefits of reinstatement to the petitioner as a Shift-in-Charge (or Assistant Production Chemist) and the relief prayed for by the petitioner.

2. In the affidavit filed in support of the first Petition referred to above, the petitioner would submit that he joined the services of the second respondent company on 4.4.1978; that he also performed the duties of the shift in charge and was the sole shift in charge of the boiler house though he was designated as Apprentice Trainee; that the period of his training was extended periodically and he was required to obtain a first class Boiler Competency Certificate

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during the period of training, which, according to the Madras Boiler Attendant Rules could be obtained only after a minimum period of five years of service; that after obtaining the second class Boiler Competency Certificate on 4.10.1981, he was terminated from service on the ground that he had not obtained a first class Boiler Competency Certificate; that he raised an Industrial Dispute No.82 of 1982 before the Labour Court, Coimbatore challenging his termination; that the Labour Court by award dated 9.3.1983 directed the petitioner to be reinstated with continuity of service and backwages; that the petitioner filed a claim petition No.406 of 1983 under Section 33-C(2) of the Industrial Disputes Act before the same Court claiming backwages for the period from 4.4.1979 to 4.4.1983; that during the pendency of the said claim petition, the second respondent filed W.P.No.8353 of 1983 challenging the said award; that this Court dismissed the above writ petition by order dated 21.10.1991; that on 16.12.1991, the second respondent issued an order reinstating the petitioner in the post of Helper; that during his earlier tenure of service he worked as Shift In-charge, which is a higher post than the post of Helper; that he made representations to the second respondent to reinstate him as Shift In-charge to which there was no response; that he preferred a complaint on 25.3.1992 under Section 29 of the Industrial Disputes Act before the Labour Officer, Salem in respect of the non-implementation of the Award in I.D.No.82 of 1982 by the second respondent; that the second respondent preferred a criminal original petition No.176 of 1994 seeking to quash the said proceedings and obtained a stay of proceedings and subsequently, the same was dismissed as withdrawn on 30.1.1985; that the petitioner also filed claim petition No.252 of 1992 claiming back wages of Rs.7,57,285/- for the period from 5.10.1983 to 5.12.1992; that his earlier claim petition was also transferred to the Labour Court, Salem and re-numbered as C.P.No.6 of 1992; that as per the settlement under Section 12(3) of the Industrial Disputes Act, the petitioner claimed that he had to be designated as Assistant Production Chemist; that the Management contended that the petitioner was not entitled to any wages after 28.12.1991 and issued a notice directing him to join duty as Helper since he had refused to join duty as Helper; that the Labour Court, Salem by common order dated 14.2.1995 in both the claim petitions computed the amount to be paid to the petitioner for the period covered in C.P.252 of 1992 at Rs.86,792.50 and for the period covered in C.P.No.6 of 1992 at Rs.25,170/-; that it is only against these orders the petitioner has come forward with the above writ petition for the relief extracted supra.

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3. In the counter affidavit filed by the second respondent , it would submit that the second respondent is manufacturing aluminum ingots and wire rods having three boilers and some Boiler Operators having first class Boiler Competency Certificate; that on 28.3.1978, the petitioner was appointed as an Apprentice Trainee for one year on condition that he should acquire first class Boiler Competency Certificate during the period of training; that despite granting of

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extension of time till 3.10.1981, he could not secure the same and so his employment came to an end on 3.10.1981; that the petitioner raised I.D.No.82 of 1982 before the Labour Court, Coimbatore and by award dated 9.3.1983, the Labour Court held that the termination of his employment would amount to retrenchment and as the provisions of section 25-F of the Industrial Dispute Act had not been complied with, the same was not justified and hence directed the reinstatement of the petitioner with continuity of service and back wages; that the second respondent preferred W.P.No.8353 of 1983 before this Court and by order dated 21.10.91, this Court confirmed the award of Labour Court; that on 12.12.1991, the second respondent called the petitioner for discussion and as the post of Boiler Attendant required a first class Boiler Competency Certificate; that the petitioner could be appointed only as a Helper and in that view, on 16.12.91, the second respondent appointed the petitioner as degrade helper but the petitioner insisted appointment as Shift In-charge; that the petitioner filed C.P.No.6 of 1992 for back wages and C.P.No.252 of 92 was for wages as Shift In-charge till that date that by a common order, the first respondent passed an order on 14.2.1995 holding that the petitioner could be reinstated only in the post which he held before termination and as the petitioner did not acquire the required certificate; that the back wages was computed at Rs.25,170/- in CP.No.6 of 1992 and at Rs.86,792.50 in C.P.No.652 of 1992 and in other respects, the claim of the petitioner was rejected; that according to the second respondent, the petitioner cannot agitate the question of his being appointed as Shift In-charge against the post of Helper offered by the second respondent in a proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947 and hence, the allegations made by the petitioner are liable to be rejected and would pray to dismiss the writ petition referred above.

4. During arguments, Mr. Prakash, learned Senior Counsel appearing on behalf of the petitioner would submit that the impugned order suffers fro errors of law apparent on the face of the record; that the Labour Court had acted beyond the purview of its jurisdiction under Section 33-C(2) of the Industrial Disputes Act 1947; that the Labour Court only performs the functions of the Executing Court, which has to give effect to the Award in the Industrial Dispute based on which the claim petition has been filed and not to go beyond the order; that the Labour Court has failed to appreciate the import of the term "reinstatement"; that the reinstatement means putting back the employee in the same position that he was in, prior to the termination from service; that the Labour Court erred in holding that the petitioner is not entitled to any wages for the period beyond 21.12.1991 on the basis that the petitioner had refused to join duty in the post of Helper and therefore, the petitioner has come forward with the above writ petition for the relief extracted supra.

5. On the contrary, the learned counsel appearing for the 2nd respondent would submit that the workman cannot ask for a job

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which he is not legally entitled to; that the impugned award does not suffer from any apparent error of law or there is any perversity, which needs interference under Article 226 of the Constitution of India and would pray to dismiss the writ petition. Learned counsel for the second respondent-Management would also cite the following decisions in support of the case of this respondent. (i) 1957-2- LLJ 696 (SHETTY S.S. Vs. BHARAT NIDHI, LTD.,) (ii) 1996-2- LLJ 216 (THE PRESIDENT, SRIRANGAM CO-OPERATIVE URBAN BANK LTD., Vs. PRESIDING OFFICER, LABOUR COURT, MADURAI AND OTHER (iii)2000-2-LLJ 1660 (STATE BANK OF INDIA Vs. RAM CHANDRA DUBEY & OTHERS)

(i) In the first judgment cited above, the Honourable Apex Court has held

> "Whatever be the position in regard to the terms and conditions of employment thus varied in accordance with the terms of the award, the benefit of reinstatement awarded to a workman certainly cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at nought the order of wrongful dismissal of the workman by the employer and to reinstate him in the service of the employer as if the contract of employment originally entered into had been continuing. The terms and conditions of the contract which obtained when the workman was in the employment of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employment of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before."

(ii) In the second judgment cited above the Honourable Division Bench of this Court has held

> "It is not in dispute that the writ petitioner was working on daily wage basis and he was being paid a sum of Rs.13/- per day, excluding, Sundays, at the time when his services were terminated. In such a case when the termination has been made in violation of Section 25F of the Act, the direction for reinstatement should be only to the effect that the workman should be reinstated in the same position and the same nature of employment which he was enjoying on the date of termination. The order passed by the learned single judge does not

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make that point clear, therefore we modify the order of the learned single judge insofar as it directs reinstatement of the writ petitioner with continuity of service, back wages and all other attendant benefits in the following terms;

> The 2nd respondent workman be reinstated as daily wage workman at the rate of Rs.13/- per day. However, we make it clear that if on the date of reinstatement there is an increase in the daily wages, he would be entitled to such increase. As far as the arrears of wages from the date of termination till March 31, 1996 is concerned it has been calculated at the rate of Rs.13/- per day, excluding Sundays by the appellant bank, amounting to Rs.54,275/-. Shri K.Chandru learned counsel appearing for the 2nd respondent workman submits that the workman accepts the said amount as arrears of wages subject to any statutory benefits, if available to the daily wage workmen and subject to payment of reinstatement. Learned counsel for the appellant bank also submits that the bank has no objection for payment of Rs.54,275/- as arrears of wages from the date of termination till the end of March, 1996. We place these submissions on record and on the basis of those submissions, we issue further directions in addition to the one issued above."

(iii) In the third judgment cited above, the Honourable Apex Court in paragraph 8 of its judgment has held

> "The, principles enunciated in the decisions referred by either side can be summed up as follows:
>
> Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit, can approach Labour Court under Section 33-C (2) of the Act. The benefit sought to be enforced under Section 33-C (2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is

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considered, just and fair on the other hand is vital. The former falls within the jurisdiction of Labour Court exercising powers under Section 33-C (2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confirmed only to the reinstatement without stating anything more as to the back wages. Hence, that relief must be deemed to have been denied, for want is claimed but not granted, necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made."

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing on behalf of both, what comes to be assessed by this Court is that the petitioner an employee of the second respondent management has filed the above writ petition praying for a Writ of Certiorari to be issued relating to the common order passed by the first respondent herein dated 14.2.1995 made in C.P.Nos.6 of 1992 and 252 of 1992 quash the same in so far as it denied the benefit of reinstatement to the petitioner as Shift in-charge (or Assistant Production Chemist) and the relief prayed for by the petitioner, adhering to the prayer made in the writ petition if an order has to be passed by this Court pertaining to the case of the petitioner in the context of the order impugned herein passed by The Presiding Officer, Labour Court, Salem, the first respondent herein under Section 33-C (2) of the Industrial Disputes Act, 1947 thereby seeking to reinstate him as Assistant Production Chemist and pay the back wages in terms of said posting.

7. The Labour Court, Salem having conducted thorough enquiry into the facts and circumstances of the case projected by the petitioner herein before it and having afforded with such opportunity for both to he heard during which though on the part of both parties no oral evidence has been adduced but nine documents would be marked on the part of the petitioner as Exhibits W-1 to W-9 and 24 documents would be marked on the part of the management as Exhibits M-1 to M-24 and in consideration of these materials placed on record and after hearing their counsel would ultimately arrive at the conclusion holding that the petitioner was not entitled to the back wages as of Shift in-charge (or Assistant Production Chemist) but only as a helper thus partly allowing C.P.Nos.6 of 1992 and 252 of 1992 and directing

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the second respondent to pay to the petitioner a sum of Rs.25,170/- and a further sum of Rs.100/- as costs, as per order in C.P.No.6 of 1992 and further directing the management to pay to the petitioner a sum Rs.86,792.50 with a costs of Rs.100/- as per order in C.P.No.252 of 1992 and it is the common award passed by the Labour Court, Salem as per its order dated 14.2.1995. Aggrieved, the petitioner has come forward before this Court to testify the Judicial Review in the above writ petition on grounds such as those brought forth supra. The pertinent question for decision is whether the labour Court below is right in holding that the petitioner is only entitled to be reinstated as a helper and not as a shift in-charge (or Assistant Production Chemist) and that he is entitled to the back wages for the period calculated therein on such terms? To answer this question, it is relevant to go into the factual position of the case and a careful perusal of the common award passed by the Labour Court below would clearly show that in due consideration of the pleadings of parties and having given full opportunities for the parties to be heard on a full enquiry held and in consideration of those materials placed in the form of documentary evidence on both sides and upon hearing their learned counsel ultimate decisions have been arrived at by the Labour Court; that in the facts and circumstances of the case the petitioner could only be treated as a helper and not as Assistant Production Chemist and only on such terms his back wages could be calculated for those periods that he had attended duties and has passed its award as aforementioned.

8. The argument of the petitioner is that the Labour Court, Salem has erred in its decision acting over and beyond the award and without acting as a Court of execution it has gone beyond its jurisdiction in assessing the subject matter as a Court of Enquiry and therefore the award is bad. Furthermore, it would be argued that the term reinstatement would only mean putting together the employee in the same position that he was already in, prior to termination from service and that the Labour Court has erred in holding that the petitioner is not entitled to back-wages for the period beyond 21.12.1991, since the petitioner refused to join duty in the post of helper.

9. Regarding this point though all the three judgments cited on the part of the 2nd respondent would deal with the position of law still the first judgment extracted above reported in (supra) 1957 (II) LLJ 696 serves giving clarity to the position of law pertaining to the subject wherein it is definitely held that 'the terms and conditions of the contract which obtained when the workman was in the employment of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employment of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the

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workman is reinstated in his old service as before'. In application of this proposition of law to the context of the facts of the case in hand, it would be argued on the part of the petitioner that at the time of termination of contract of service he was working as shift in-charge not as Assistant Production Chemist, which is higher post, those that of the helper and therefore he should be reinstated as per the directions of the Labour Court only as a shift in-charge and not as a helper. However, on the part of the management it would be strongly argued that the petitioner was appointed as apprentice trainee for one year on condition that he should acquire the First Class Boiler Competency Certificate during the period of training but despite granting extension of time he could not secure the said certificate and hence it should be construed that his employment came to an end as on 3.10.1981.

10. It is an admitted case that during the period of apprentice training the petitioner should secure the First Class Boiler Competency Certificate and it is the further fact that the petitioner failed to get the same and therefore needless to mention that the petitioner would not become entitled to claim for the post of Boiler attending shift in-charge; that the Labour Court, Coimbatore though concluded that the case of the petitioner was one of retrenchment and for non-application of the provisions of Section 25-F of the Industrial Disputes Act, 1947 he must be reinstated with continuity of service and back wages against which the second respondent preferred W.P.No.8353 of 1983, the Award of the Labour Court, Coimbatore to be confirmed and therefore it is the award of the Labour Court, Coimbatore passed in I.D.No.82 of 1982 in its pith and marrow should be executed within the meaning of the legality of the legal propositions pertaining to the subject but the Labour Court, Salem has gone back the award of the Labour Court, Coimbatore in reassessing the facts and circumstances and re-fixing the period for which the back wages have to be calculated thus denying for the period beyond 21.12.1991 on the basis that the petitioner had refused to join duty in the post of helper pertaining to which undoubtedly the Tribunal has gone beyond its jurisdiction and therefore in terms of the award passed by the Labour Court, Coimbatore in I.D.No.82 of 1982, the Labour Court, Salem should have gone further without making amends into the said award and therefore while calculating the back wages, for the entire period covered as per the award of the Labour Court, Coimbatore made in I.D.No.82 of 1982 should be made.

11. So far as the status of the petitioner regarding whether he was to be treated as a helper or shift in-charge in reinstatement giving effect to the judgments cited supra, it would be proper to conclude that though the petitioner might have been permitted to work in the capacity as a shift in-charge for some time, still since he failed to acquire the First Class Boiler Competency Certificate during the period of training which is a precondition imposed for being posted as shift in-charge, the petitioner is disentitled to claim to

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be reinstated as shift in-charge, which he legally not entitled to and therefore the back wages as per the award of the Labour Court, Coimbatore has to be calculated for the entire period but regarding reinstatement it is only as an helper and not as a shift in-charge and hence the following order.

In result,

(i) the above writ petition is partly allowed to the extent indicated below;

(ii) that the petitioner/employee shall be entitled to back wages for all the days as a helper till the date of his induction into service pursuant to the common order passed by the first respondent, Labour Court, Salem in C.P.Nos.6 and 252 of 1992 dated 14.2.1995;

(iii) that the request of the petitioner for reinstatement as a shift-in-charge is rejected;

(iv) there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to:

The Presiding Officer,Labour Court,Salem.

One cc to M/s T.S.Gopalan & Co.,, Advocate SR.5623.

One cc to Mr.V.Prakash, Advocate SR.No.6019.

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